

Members

Sen. Beverly Gard, Chairperson
Sen. Kent Adams
Sen. Glenn Howard
Sen. Vi Simpson
Rep. Ron Herrell
Rep. Jonathan Weinzapfel
Rep. Richard Mangus
Rep. David Wolkins
Gary Reding
Randy Edgemon
Mayor William Goffinet
Mayor James Trobaugh
Art Smith, Jr.
Ellen Tobias
William Hayden
Kerry Manders
Lori F. Kaplan
Sandra Miles



ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Authority: P.L. 248-2001 (SEA 121)

MEETING MINUTES¹

Meeting Date: September 28, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Beverly Gard, Chairperson; Sen. Vi Simpson; Rep. Ron Herrell; Rep. Jonathan Weinzapfel; Rep. Richard Mangus; Rep. David Wolkins; Mayor William Goffinet; Art Smith, Jr.; Ellen Tobias; Kerry Manders; Lori F. Kaplan; Sandra Miles.

Members Absent: Sen. Kent Adams; Sen. Glenn Howard; Gary Reding; Randy Edgemon; Mayor James Trobaugh; William Hayden.

Sen. Gard opened the meeting at 1:00 p.m. The minutes from the EQSC meeting of September 4, 2001, were approved.

Commissioner Kaplan gave the commissioner's report, which included the following:

1. Outreach, education, and assistance from August 1 through August 31, 2001

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- (Exhibit 1)
- 2. Rulemaking updates for the environmental rulemaking boards (Exhibit 2)
- 3. Fees collected (Exhibit 3)
- 4. Permit report cards (Exhibit 4)
- 5. Permit charts (Exhibit 5)
- 6. Sample news releases from August 29 through September 20, 2001 (Exhibit 6)

Commissioner Kaplan noted that in response to questions from the last EQSC meeting, IDEM is preparing a report on NPDES permits that will be completed by the end of October. A similar report will be made a part of information packets provided to the EQSC in the future.

Sen. Gard requested an overview of the status of the various rulemaking efforts by the environmental rulemaking boards. Commissioner Kaplan and Nancy King, IDEM office of legal counsel, provided an overview.

Sen. Gard opened discussion on the environmental crimes issue. Sen. Kenley presented on the environmental crimes issue that was the subject of SB 133 from the 2001 session of the General Assembly. SB 133 would eliminate the provision that establishes as a Class D felony an intentional, knowing, or reckless violation of: (1) a rule or standard adopted by one of the environmental rulemaking boards; or (2) a determination, a permit, or an order made or issued by the commissioner under environmental management laws. Sen. Kenley believes there are potential constitutional infirmities in the current law with respect to delegation of legislative authority and vagueness. He believes the best policy is for the General Assembly to determine which violations constitute felonies (or other levels of offense) rather than authorizing an administrative agency to do so. This policy would eliminate the potential for a constitutional challenge to the statute.

Sen. Kenley suggested that the best way to effectuate the proposed change would be to establish a committee comprised of legislators, an appellate judge, and representatives from IDEM, local government, environmental interests, and the regulated community. The committee would evaluate the seriousness of offenses and the appropriate level of criminal or civil penalty, the need to coordinate with requirements of federal law, and the extent to which violations of administrative orders should be criminalized. Over a two year period, the committee would generate specific proposals that would be subject to public hearings, and a bill draft would be finalized in the second year. Sen. Kenley expects that this process would result in an appropriately structured set of clearly stated violations and consequences that would be more easily administered and better understood by the public. Possible disadvantages are that IDEM would have less flexibility, a similar provision in the law governing the Department of Natural resources would not be addressed, dovetailing with federal requirements would be difficult, and the project would require a significant effort by many interested parties.

In response to a question from Sandra Miles, Sen. Kenley indicated that there are differing views on the extent to which the current law has caused problems, that a significant element of his proposal is to avoid future problems, and that while he does not have detailed information on how other states have dealt with the issue, he believes many states' laws are similar to the Indiana statute. Sen. Kenley indicated that he will research other states' laws.

In response to a question from Art Smith, Jr. concerning the need under the proposal to place specific standards for offenses in statutes, Sen. Kenley indicated that part of the process would be to create specific statutory standards, citing the level of specificity in the drug violation statutes.

In response to a question from Rep. Herrell, Sen. Kenley stated that: (1) he is not proposing exactly which penalties should apply to certain violations, but that the specifics should be worked out in the described process for drafting the bill; and (2) he does not think it is a major problem that placing standards in the statute might result in less flexibility in responding to federal rule changes.

In response to a question from Mayor Goffinet, Sen. Kenley indicated that the proposal would not affect violations established by local ordinances.

In response to a question from Rep. Weinzapfel, Commissioner Kaplan indicated that felony charges have been filed under the statutory provisions in issue. Sen. Kenley stated that regardless of charges previously filed or pending litigation, his proposal seeks to eliminate potential issues.

Kerry Manders commented that he believes that to the extent the proposal impacts illegal dumping, the goal should be to make it easier for communities to maintain their integrity and their ability to combat illegal dumping.

In response to a question from Ellen Tobias, Sen. Kenley said he does not know what the disposition of U.S. EPA would be toward the proposal. Commissioner Kaplan commented that federal law delegates certain responsibilities to the state, and that she would want to be sure that the proposal would not conflict with those responsibilities. Nancy King stated IDEM's belief that case law upholds the current statute. Most violations are addressed through civil penalties, and the criminal provisions of the statute in issue are enforced by prosecutors.

Glenn Pratt described his involvement at the state and federal levels with the first criminal cases that were filed. He stressed the importance of criminal prosecutions in the face of companies with the attitude that legal costs and fines are cheaper than environmental compliance. He does not think the current process has been abused, but believes the process described for preparing a bill on the proposal would be useful. The focus should be on deliberate, premeditated violations.

Sen. Gard noted that in its remaining meetings this year, the EQSC will consider technical assistance issues, recycling issues, air issues, and the SRF program. She also noted the EQSC policy of making recommendations without endorsing specific bill language.

Sen. Gard began discussion of the septic systems issue by reviewing the activity by the EQSC in 2000 on the issue. She described the purpose of the current review to consider what changes might be made to bills on septic issues that did not pass in the 2001 session of the General Assembly to improve the chances for passage.

Alan Dunn of the Indiana State Department of Health (ISDH) presented on recessional moraines in northeast Indiana and distributed related materials (Exhibit 7). The moraines affect several counties and consist of very dense soil with poor permeability that is unsuitable for septic systems. ISDH has been researching the subtle differences among various types of soils as they relate to septic system suitability, and has provided relevant information to county health departments. He indicated that much work remains to be done to overcome the difficulties presented by soils in recessional moraine areas.

In spite of significant research, it has been difficult to generate solutions. Technology has not yet led to solutions that will solve all septic system problems.

Rep. Herrell commented that significant costs for septic system testing place a heavy burden on property owners, and that new homeowners are subsidizing the state for testing

costs. He indicated that inadequate permitting requirements fail to take into account successful operation of systems, some over many years, and noted that septic system problems present an obstacle in refinancing homes. Mr. Dunn indicated that ISDH is looking for ways to make the permitting process less burdensome, and is open to ideas for change.

Sen. Gard stated that the biggest problem with respect to septic systems is funding. She said that comments would be appreciated on SB 225 from the 2001 session to allow for the establishment of onsite waste management districts, and on SB 235 from the 2001 session to allow for supplemental fund grants through the Budget Agency.

Lynn Dennis, Indiana Chapter of the Nature Conservancy, supported any education, inspection, and maintenance initiatives.

In response to questions from Mr. Manders, Mr. Dunn indicated that ISDH supports and has approved the use of constructed wetlands septic systems, and has urged installers of septic systems to give property owners information on operation and maintenance of the systems.

In response to a question from Rep. Wolkins, Commissioner Kaplan stated that IDEM has been looking closely at constructed wetlands septic systems and will review whether IDEM has any ongoing problems with the use of this type of system.

Loren Robertson, Administrator of the Allen County Department of Health, described the frustrations of having limited answers to septic system problems that are sometimes severe. The problems in Allen County are exacerbated by the moraine soils. He supported the septic systems bills considered in the 2001 session as parts of a solution to the problem. His agency is working with Purdue University to explore alternatives for resolution of septic system problems in Allen County. He emphasized that septic system problems are a public health issue. In response to a question from Sen. Simpson, Mr. Robertson indicated that limiting the number of new septic system permits has been considered and that consideration of such limitations is included in the land use plan.

Mayor Goffinet commented that based on his experience in Tell City and Perry County, the only viable solution is to use a sewage treatment facility, and that additional funding options are needed.

Rep. Weinzapfel expressed his concern, given the septic systems problems relating to existing properties, for increasing funding options that would encourage the installation of additional septic systems. Sen. Gard commented that she would expect county executives to limit use of additional funding for expanding the use of septic systems, and that funding solutions are needed that do not result in exorbitant sewer bills. Sen. Gard asked Mr. Robertson to pass on to the EQSC any relevant information he receives from Purdue University.

Bill Grant, LaGrange County, described the often inaccurate historical views on the use of septic systems, and the recent efforts in his county to expand the use of constructed wetlands septic systems. Modifications have been made that address all pollutants for which there are standards, including nitrogen. He believes it makes no sense to adopt rules that increase the expense to the property owner, but do not increase the effectiveness of septic systems. He emphasized that rural areas need assistance, that there are potential solutions, and that decentralized solutions can be accomplished at the lowest cost.

Pam Thevenow, Marion County Health Department, described the difficulty in getting neighborhood support for sewer connections, largely because the cost to each property is as much as \$15,000. She supports any efforts to make sewer connections affordable. She commented that any efforts must include strong enforcement provisions. She believes a review of installer certification and licensing and an examination of the limitation of the issuance of septic system permits are appropriate. Poor planning in the past in the siting of septic systems has resulted in some properties with septic system problems that cannot be resolved. Some neighborhoods with low cost homes have significant problems that homeowners cannot afford to address. Any assistance to health departments would be appreciated.

Glenn Pratt endorsed the establishment of septic districts to address rural areas, and the allowance of tax credits in certain areas.

Sen. Gard began discussion of the outdoor lighting issue. Kevin Fleming presented the views of the Indiana Council on Outdoor Lighting Education. A copy of his slide presentation is included as Exhibit 8. Misdirected or excessively bright light wastes energy, creates pollutants for no benefit, destroys flora and fauna, and intrudes on the enjoyment of property. Poorly designed lighting for roads leads to poor visibility and unsafe conditions. Some locations, such as gas stations, are lighted at many multiples beyond the light needed. In addition, the brighter the light in an area, the more difficult it is to see into adjoining areas with less or no lighting. Mr. Fleming gave an examples of the large amount of coal needed to provide the electricity to illuminate gas stations and of the resultant pollution. He described the deleterious effects on flora and fauna of night lighting that disrupts the steady day/night cycle. Mr. Fleming stated that studies have failed to confirm any positive security results in areas of increased lighting. He urged that there should be: (1) standards for light trespass and for direction of light from high intensity light fixtures; (2) a model lighting ordinance developed for use by local governments; (3) limitation of accident liability if lighting meets standards; (4) limitation of liability for unlighted businesses that are closed; (5) enhanced funding for local governments that adopt light ordinances; (6) limitation of lighting that impinges on academic astronomical observations; (7) educational resources on light pollution; (8) elimination of unnecessary illumination of reflective road signs; (9) more efficient lighting on road medians; (10) full cutoff lighting priced comparably with non-full cutoff lighting; and (11) disclaimers on lighting sold as security lighting.

In response to a question from Rep. Weinzapfel, Mr. Fleming stated that the Illuminating Engineering Society of North America has recommended full cutoff lighting for road lighting fixtures, but the Indiana Department of Transportation has not adopted this standard. Mr. Manders commented that he supports the reduction of excessive lighting, and the development of a model lighting ordinance for local government. In response to a question from Rep. Mangus, Mr. Fleming indicated that the Marion County Sheriff's Department accident report form includes no statement of lighting conditions at the time of a crime incident, that the department does not train to distinguish good lighting from poor lighting, that his emphasis is on better lighting for all purposes, and that he has no opposition to standard Christmas lighting. In response to a question from Ms. Tobias, Mr. Fleming stated that he does not have comprehensive information on the treatment of outdoor lighting by other states. Rep. Wolkins questioned Mr. Fleming's assertion that studies have not shown positive effects from security lighting. Mr. Pratt and Clarke Kahlo, Marion County Alliance of Neighborhood Associations, expressed support for outdoor lighting initiatives.

Sen. Gard asked members to consider all issues heard by the EQSC thus far for discussion in upcoming meetings of recommendations to be made in the EQSC's final

report.

Sen. Gard adjourned the meeting at 2:50 p.m.